UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

DECISION AND ORDER

07-CR-6197L

v.

MANOLO RIJO,

Defendant.

Defendant, Manolo Rijo ("Rijo"), was charged with possession of cocaine with intent to distribute. Defendant filed various motions, including a motion to suppress identification evidence. Specifically, defendant challenges the identification procedures utilized by the Government.

This Court referred all pretrial motions in this case to United States Magistrate Judge Jonathan W. Feldman pursuant to 28 U.S.C. § 636(b). Magistrate Judge Feldman conducted a suppression hearing at which several witnesses testified. At the conclusion of the suppression hearing proceedings, Magistrate Judge Feldman issued a thorough Report and Recommendation (Dkt. #114) in which he recommended that defendant's motion to suppress be denied.

The time within which to file objections to that Report has now elapsed and no objections have been filed. The taped proceedings of the suppression hearing have been made available to me for review. I have carefully reviewed the Report and Recommendation of Magistrate Judge Feldman, and I believe there is no basis to modify or reject his Report and Recommendation.

Magistrate Judge Feldman carefully reviewed the evidence relating to the identification procedures conducted on November 6 and November 8, 2007 with the relevant witnesses. Magistrate Judge Feldman described the nature of the witnesses' prior contact with the defendant, as well as the procedures utilized to exhibit the photographic array to the witnesses. I find, as did the Magistrate Judge, that there was nothing unduly suggestive involved in the presentation of the array nor was there anything unique or unduly suggestive about the photographs themselves.

In light of all these circumstances, I reject defendant's contention that these procedures were unduly suggestive so as to create a substantial likelihood of misidentification. On the contrary, I find no such suggestivity whatsoever. In sum, I find, as did Magistrate Judge Feldman, that neither the photographs themselves nor the manner by which they were presented to the witnesses were suggestive.

CONCLUSION

I accept and adopt the Report and Recommendation (Dkt. #114) of United States Magistrate Judge Jonathan W. Feldman. Defendant Manolo Rijo's motion to suppress identification evidence is in all respects denied.

IT IS SO ORDERED.



DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
November 30, 2009.